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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

L.A. ARENA FUNDING, LLC,

Plaintiff and Respondent,

v.

SILKTEX, LLC,

Defendant and Appellant.

B264790

(Los Angeles County  
Super. Ct. No. BC434861)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
John L. Segal, Judge. Dismissed.

Law Offices of Richard S. Singer, George J. Cole and Richard S. Singer for  
Defendant and Appellant.

Arent Fox and Richard D. Buckley, Jr., for Plaintiff and Respondent.

## BACKGROUND

This is the second appeal in this breach of contract action. The underlying lawsuit was brought by plaintiff and respondent L.A. Arena Funding, LLC (LAAF), which operates the Staples Center in downtown Los Angeles, against defendant and appellant Silktex, LLC (Silktex).<sup>1</sup> LAAF alleged that Silktex executed several agreements to license luxury suites at the Staples Center, but failed to perform.

In the prior appeal, this court reversed the trial court's entry of judgment in favor of Silktex following a bench trial. We concluded the trial court erred in finding LAAF had failed to establish that the individual who signed the licensing agreements on behalf of Silktex lacked the ostensible authority to do so. We found that LAAF was entitled to judgment as a matter of law on the issue of liability for Silktex's breach of the licensing agreements. However, because the trial court's error resulted in no finding as to the amount of damages, if any, to which LAAF was entitled, we remanded the matter for the limited purpose of determining that issue. (*Silktex I, supra*, B250777, at p. 19, fn. 8 [“[b]ecause [Silktex] ‘had a full and fair opportunity’ to present its case regarding damages” at trial, no further trial as to that issue was required on remand].)

On remand, the matter was transferred to a different judge who established a briefing schedule and set a date for a hearing on the damages issue. The matter was argued before and briefly taken under submission by the trial court on April 9,

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<sup>1</sup> On our own motion, we take judicial notice of and draw relevant background facts from the record, documents filed while this appeal was pending, including the attachment, and our opinion in the prior appeal (*L.A. Arena Funding, LLC v. Silktex, LLC* (Aug. 6, 2014, B250777) [nonpub. opn.], (*Silktex I*)). (See Evid. Code, § 452, subd. (d) [regarding permissive judicial notice of court records].)

2015, which issued a “Ruling on Submitted Matter” that same day. On April 22, 2015, judgment was entered in favor of LAAF for \$1,283,820.60 (actual damages of \$825,000, plus prejudgment interest of \$458,820.60). Silktex appealed.

While the appeal was pending it came to the court’s attention that the California Franchise Tax Board (FTB) had forfeited the corporate powers, rights and privileges of Silktex, a Nevada LLC, due to the company’s failure to satisfy applicable tax requirements. (Rev. & Tax. Code, §§ 23301, subds. (a)–(c), 23301.5.)<sup>2</sup>

On January 22, 2016, on its own motion, this court issued an OSC ordering Silktex to submit, by February 22, 2016, a “certificate of revivor” from the FTB, or other competent evidence proving that its corporate powers had been reinstated and it had the legal power to prosecute this appeal. (§§ 23305, 23305a; see *Cadle Co. v. World Wide Hospitality Furniture, Inc.* (2006) 144 Cal.App.4th 504, 511–514 [when forfeiture of corporate status is discovered during pendency of litigation, the court may on its own motion continue the matter to permit the corporation to obtain certificate of revivor].) We warned Silktex that its failure to comply with our order by February 22, would be deemed an abandonment of the appeal, and result in its dismissal. Oral argument was continued from February 19 to March 17, 2016.

On February 18, 2016, the court received, presumably from counsel for Silktex, a three-page uncertified, unauthenticated document without proof of service. One page of that document, entitled “Application for Certificate of Revivor–Limited Liability Company” (Application), was purportedly signed and

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<sup>2</sup> Undesignated statutory references are to the Revenue and Taxation Code.

submitted to the FTB on February 16, 2016, by Attala Zane Giles, a “Managing Member” of Silktex. In the Application Giles requests that the FTB relieve Silktex from forfeiture of its corporate status and states that he has “previously submitted or [is] enclosing all required payments, returns, or documents.”<sup>3</sup> Upon receiving this document, the court clerk notified Richard S. Singer, counsel for Silktex, that the document failed to satisfy the requirements of the January 22 OSC. Singer informally (telephonically) indicated that he needed an additional two weeks to obtain the required certificate of revivor. On the court’s own motion, the matter was continued for oral argument to April 14, 2016. To date, Silktex has failed to submit a certificate of revivor or any further documentation, and the court has received no further communication from Singer, who voluntarily waived his opportunity to appear for oral argument on April 14, 2016.

## **DISCUSSION**

Under California law, a corporation may not prosecute an “appeal from an adverse judgment in an action while its corporate rights are suspended for failure to pay taxes.” [Citation.]” (*Bourhis v. Lord* (2013) 56 Cal.4th 320, 324 (*Bourhis*); *Tabarrejo v. Superior Court* (2014) 232 Cal.App.4th 849, 862 (*Tabarrejo*).)

However, where a corporation’s powers have been forfeited for failure to pay taxes, those powers may be restored upon filing all required tax returns and

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<sup>3</sup> The Application is attached. The other two pages of the document bear no relevance here.

paying the requisite taxes, penalties and interest. Once those payments are made, a corporate taxpayer may seek a “certificate of revivor” from the FTB. (§§ 23305, 23305a [certificate of revivor constitutes prima facie evidence of a corporation’s reinstatement].) Once a certificate of revivor is obtained, corporate powers are restored, including the legal capacity to prosecute an appeal, even if the corporation lacked that capacity at the time it filed the appeal. (*Bourhis, supra*, 56 Cal.4th at p. 329; *Tabarrejo, supra*, 232 Cal.App.4th at p. 862 [“revival of corporate powers retroactively validates any procedural steps taken on behalf of the corporation in the prosecution or defense of a lawsuit while the corporation was under suspension”].)

On our own motion, this court has twice continued oral argument in this matter to permit Silktex the time and opportunity to obtain and file a certificate of revivor or other competent evidence to demonstrate that its corporate powers have been reinstated and it has the authority to prosecute this appeal. From the outset we warned Silktex that failure to comply with our order would be deemed an abandonment of its appeal and result in dismissal. To date, Silktex has failed to comply with the court’s order and has submitted no documentation other than the unauthenticated February 16, 2016 Application requesting relief from forfeiture discussed above, purportedly submitted by Silktex to the FTB six days before the corporation’s certificate of revivor was due to be filed with this court. (See attachment.)

Singer, counsel for Silktex, was notified immediately upon the court’s receipt of the Application that the document did not satisfy the requirements of the January 22 order. He requested and received additional time to comply. To date, however, Silktex has failed either to comply with the court’s January 22, 2016

order, or to provide any explanation as to why compliance has further been delayed.

Here, despite clear warning that its noncompliance would result in dismissal of the appeal, Silktex submitted essentially no more than a one-page Application which falls fall short of even substantial compliance with the documentation required by the January 22 OSC. Silktex has been given generous opportunities to file the appropriate documents, but has failed to do so. Therefore, we dismiss the appeal.

### **DISPOSITION**

The appeal is dismissed. Respondent LAAF shall recover its costs on appeal.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

COLLINS, J.